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TO: Chief, IO (Attn: [redacted] INFO: EE, COS/G		HEADQUARTERS FILE NO.: 200-124-0039 Field File: RLS/1704
FROM: Chief, Munich Base		DATE: 6 September 1960
SUBJECT: DTDORIC/QKACTIVE/Operations Transmittal of ODACID Memorandum		RE: "43-3" — (CHECK "X" ONE) MARKED FOR INDEXING NO INDEXING REQUIRED
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Forwarded for your information only is a copy of an ODACID memorandum. It is believed Headquarters is already aware of all the developments mentioned therein.

Approved [redacted]

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SEPARATE COVER ATTACHMENT — TO EGMA 50978

OCA

FOREIGN SERVICE DESPATCH

FROM : AmConGen Munich, Germany

44
DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

August 12, 1960
DATE

REF :

23 AUG 1960

SUBJECT: Radio Liberty and the DAG Differ over Contract

SUMMARY

The American Committee for Liberation and the German white collar workers union DAG are currently involved in a controversy over a collective bargaining contract. The points at issue are relatively complicated and rest to a large extent upon differing interpretations of basic German labor law. Stated in general terms, the American Committee claims it is legally entitled to conclude an agreement with the Works Council of Radio Liberty, whereas the DAG takes the position that any agreement involving working terms and conditions at Radio Liberty must be concluded with the union, not the Works Council. The situation is described in some detail below. The Consulate General is not in a position to comment on the merits of the argument but believes the Department's attention should be called to a situation which may create adverse publicity for Radio Liberty and which could be damaging to the American Committee's mission.

* * * * * * * * * * *

Late in 1958, the Frankfurt local of the Deutsche Angestelltengewerkschaft (DAG), the German salaried employees union, approached the American Committee for Liberation radio station "Radio Liberty" in an attempt to obtain a bargaining agreement for the station's transmitter in Lampertheim, Land Hesse. Later, the approach was broadened to include the staff of the station's Munich headquarters, and jurisdiction over both the Lampertheim staff and the Munich staff was transferred to the DAG, Munich. The union has succeeded in enrolling only about 20 per cent of the employees of the station's Munich headquarters and perhaps slightly less than half of those employed at the transmitter in Lampertheim. On this basis it claims the right to sign a bargaining agreement as agent for its members. In addition, the DAG claims a preemptive right to act as bargaining agent on working terms and conditions.

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The American Committee has taken the position that to sign an agreement with the DAG, which represents but a small minority of the station's employees, would deprive the majority of the advantages of collective bargaining. The Committee's aim has been rather to conclude an agreement with the Works Council (in which elected employee representatives sit), thereby recognizing the collective bargaining rights of the entire work force irrespective of union membership. Such an agreement has in fact recently been concluded. At the same time, the American Committee has not refused to negotiate an agreement with the DAG, one which would cover those members of the union employed by the station. It has, however, insisted that any agreement with the union would have to recognize the bargaining rights of non-union employees. This the DAG insists is impossible.

The differences between the union and the American Committee rest in part upon the interpretation of Section 59 of the Works Constitution Law (Betriebsverfassungsgesetz), which permits the conclusion of a valid works agreement in an industry if working terms and conditions in that industry are not customarily regulated by a union collective bargaining contract. The law has been so construed by the courts as to give the union preemptive rights to collective bargaining in an industry where union contracts are customary, and to exclude the possibility of valid bargaining agreements with a Works Council. The preemptive right applies, incidentally, only to those elements of terms of employment which are customarily regulated by union contracts in a given industry. The DAG view is that since all broadcasting stations in Germany have bargaining agreements with the union, including the Crusade for Freedom station Radio Free Europe (RFE), the sphere of operations in which Radio Liberty is engaged falls within the definition of an industry in which employment is customarily regulated by union contract, and a valid works agreement cannot therefore be concluded. The American Committee's interpretation of Section 59, on the other hand, is that the American Committee for Liberation, which would be a party to any union contract signed, is basically a political enterprise, the activities of which encompass many fields other than broadcasting. Its operations are, therefore, unique and no custom within the meaning of Section 59 has been established. It believes, consequently, that it can conclude a valid works agreement.

These and other points at issue were recently discussed at length in the presence of a Consulate General officer by Senator Hans SCHAUMANN, Bavarian DAG chief, and a representative of the American Committee. An accurate summary of the conversations at this meeting, prepared by the American Committee, is enclosed. During the discussions the question was raised as to whether it would be possible for an agreement to be signed with the DAG covering union members, which at the same time would permit the conclusion of a works agreement covering non-union members. It has always been the Committee's contention that the majority of its staff is non-German, consisting in large part of refugees from Communist dictatorships who are suspicious of trade unions, and that the bargaining rights of those employees

who do not wish to associate themselves with a union must be preserved. The Committee believes that the best way of doing so is through a contract with the Works Council, but is certainly not opposed to signing a union agreement which would not insist on preemptive rights to collective bargaining and would cover only union members. Senator Schaumann agreed, without enthusiasm, to request the advice of the legal staff of DAG headquarters in Hamburg as to whether a union contract and a works agreement can exist side by side. In a letter dated July 14, Schaumann informed the American Committee that his organization's legal examination of the question excludes any such possibility. The American Committee, on the other hand, also examined the legal aspects of this question and believes it would be perfectly legal to sign separate agreements, and in its reply to Schaumann's letter will inform him of this conclusion and offer to negotiate an agreement with the DAG covering union members and containing a clause which recognizes the validity of a works agreement for non-union members. This question, as well as differences over the interpretation of Section 59, can only be settled by a labor court decision which, as the matter stands now, could only result if the DAG filed suit against the Committee for its conclusion of a works agreement. Although the possibility of such a suit cannot be ruled out, it is considered unlikely that the DAG will take legal action, particularly since Schaumann admitted in the discussion with the Committee representative that the law would probably support the Committee's right to refuse to negotiate with the union, and that neither the Labor Ministry nor the courts could help the union win its aims.

Meanwhile, the DAG, which has sought AFL-CIO aid in bringing pressure to bear on the American Committee's New York headquarters, also sought Bavarian Ministry of Labor intervention. The Ministry also took the position that the legal points at issue could only be clarified by the courts. It did not support the DAG position. In stated, however, that it would welcome the conclusion of an agreement between the Committee and the DAG "in accordance with the example of Radio Free Europe".

COMMENT

The American Committee's action in concluding an agreement with the Works Council, and in addition effecting a pay raise of at least five per cent (the amount and effective date of the raise have not yet been announced), has placed the DAG in a poor tactical position, since the average employee will not worry very much about the union's ultimate fate if conditions of work and pocketbook are otherwise satisfactorily attended to. In addition, the American Committee's standing offer to negotiate a separate contract with the DAG for the union members, and the union's continued insistence on preemptive bargaining rights, places Schaumann's organization in a position which would be difficult to justify publicly. And finally, the union's doubts as to the extent to which the courts would support its position make recourse to legal channels somewhat unlikely.

Nevertheless, because the union's prestige is importantly involved in this matter some sort of action against the works agreement can be expected. The Consulate General does not believe it appropriate to comment on the merits of this dispute, which is a matter to be settled by the American Committee, the DAG, and possibly German labor law experts and the courts, but we are concerned about possible adverse publicity for Radio Liberty and the effect such publicity might have on the American Committee's mission here. Although the Committee's position is tactically sound, a DAG campaign against Radio Liberty need not, of course, rest on objective facts alone. The Department is aware that the RFE operation has been the subject of some unfavorable criticism in the past, and although Radio Liberty has to date escaped this type of criticism the DAG may seek to apply unfavorable publicity to the American Committee in an effort to achieve union goals. Although an amicable settlement is not impossible, it appears at this juncture to be unlikely, and if the union does not believe it can successfully appeal to the courts its most likely immediate recourse is to take the issue to the public.

W. K. Scott
American Consul General

Enclosure:
As stated.

Desp. 44
AmConGen Munich

COPY

Director of Administration, Hq. June 24, 1960

Assistant to Director of Administration, Munich

Conversations with German Union

This is a summary of the statements made in the course of a meeting arranged by Mr. Johnson, U.S. Consulate in Munich, upon request of Herr Hans Schaumann, chairman of the DAG (Deutsche Angestelltengewerkschaft - White Collar Workers Union) in Bavaria. The meeting took place on June 15, 1960, in the office of Mr. Johnson, Political Affairs Officer, and was attended by Messrs. Johnson, Moeller, Schaumann, Mr. Stoeckl of Mr. Johnson's office, and the undersigned. The conversation was between Mr. Moeller and Mr. Schaumann.

Mr. Schaumann opened by saying that the DAG of Land Hesse requested him to conclude a tariff contract with ACL since RFE also had such a contract. He said that his request was based on a large DAG membership in Lampertheim and a smaller membership in our Munich operation.

Mr. Moeller took the following position:

(1) ACL appreciates fully and, in its broadcasts, always recognizes the important role and contribution of the free labor unions. ACL specifically recognizes and appreciates the employees' right to bargain collectively.

(2) The large majority of the employees of ACL, however, does not now want to assert that right through a union but through their elected works council. The majority wants a works agreement and not a tariff contract. ACL considers itself bound by the clearly expressed demands of the majority of its employees.

(3) In compliance with these demands ACL will secure for all of its employees the benefits of collective bargaining. A tariff contract would yield such benefits only for a small minority of ACL employees, those who are members of the DAG. A works agreement, on the other hand, will grant these benefits to the entire staff.

(4) In accordance with Section 59 of the Works Constitution Act, ACL is authorized to conclude a valid works agreement with the works council. The fact that RFE has negotiated a tariff contract with a union does not establish a precedent against ACL. ACL is different from RFE; ACL is a unique establishment; no tariff contracts exist to which the Committee is a party; therefore it may validly conclude a works agreement.

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Mr. Schaumann answered as follows:

(1) He believes that ACL appreciates the task of free unions; that is why he finds Mr. Moeller's arguments difficult to understand.

(2) Majority-minority ratios are not important; on a nation-wide basis unions are always in a minority. The unions can bargain, and German employers usually negotiate with them even if there are only few union members in an establishment.

(3) In negotiating with CL the DAG - as any union - is interested exclusively in safeguarding its members' right to collective bargaining. The DAG is not interested in the fate of non-member employees. While the DAG does not wish to obstruct their collective rights all it can do is suggest for ACL to extend a future tariff contract to non-union members. This is what most employers do.

(4) The application of a tariff contract to non-union employees does not create a collective bargaining right for them. A collective right is better than an individual claim. He agrees that a tariff contract with CL would prejudice the position of ACL's non-union employees in regard to collective bargaining rights.

(5) He agrees that under the law ACL is fully within its legal rights to refuse to conclude a tariff contract with the DAG. Neither the Labor Ministry nor the courts can help the DAG. The latter's earlier statement to put the ACL works agreement to a test in court was "tactics". The only thing which, here and in the United States, can compel ACL to negotiate is "the force of the union". This force can be applied through means such as strike and public discussion. To apply this force eventually is a question of prestige with the DAG.

In conclusion Messrs. Moeller and Schaumann reached the following understanding:

(1) Mr. Moeller will recommend to ACL to negotiate a tariff contract with the DAG provided that the DAG will, in its tariff contract, recognize without qualification that ACL can make an independent works agreement with those of its employees who are not DAG members.

(2) Mr. Schaumann will ask the DAG lawyers whether such a clause in a tariff contract is legally possible.

(3) Both gentlemen will keep Mr. Johnson informed of any developments in the matter.

Hans W. Schoenberg

HWS/rr

Encl. EGMA 5-2978.